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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,417

04/17/2006

Friedrich H. Jung

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EXAMINER

CRANE, DANIEL C

ART UNIT

PAPER NUMBER

3725

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/560,417	<b>Applicant(s)</b> JUNG ET AL.	
	<b>Examiner</b> Daniel C. Crane	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 8, 11, 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 5-7, 9, 10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/13/2005 &amp; 4/7/2006</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS 10/31/2006</u> .                   |

## **OBJECTION TO DRAWINGS**

The drawings are objected to because of the use of German descriptions in the Figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## **BASIS FOR OBVIOUSNESS DOUBLE PATENTING REJECTION**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

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*Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

## **REJECTION OF CLAIMS OVER DOUBLE PATENTING**

Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No.

11/161235 in view of Pasternak (3,886,639). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to the skilled artisan having the benefit of the claimed invention to have fixed the tool elements relative to one another using the concepts taught by Pasternak in Figure 1 where the tool elements 21, 22 and 23 are fixedly mounted within the tool unit 20, thus, simplifying the device by reducing the number of movable components. Furthermore, it would have been obvious to the skilled artisan familiar with the claimed features to have broadened the guidance means by using any simple rail guide or structural guide as long as the guide provides controlled motion to the tool elements into operative shaping with the carrier plate.

This is a provisional obviousness-type double patenting rejection.

## **REJECTION OF CLAIMS ON FORMAL MATTERS**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-7, 9, 10 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (1) With reference to claim 5, the subject matter is indefinite because there is no antecedence for "inclines". Furthermore, it is unclear whether the "inclines" referred to in claim 5 are the same as the "slanted surfaces" as referred to in claim 1. However, the reference numbers of the "slanted surfaces" and the "inclines" do not match. (2) Failure to provide antecedence for "second guide slider" in claim 7 renders the subject matter indefinite. (3) The use of the term "it" in claim 8 renders the subject matter indefinite because what reference element is being referred to is unclear and subject to an unclear interpretation. (4) Regarding claim 9, the phrase "especially" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). (5) As to claim 10, failure to provide antecedence for the "guide sliders" (emphasis added) renders the subject matter indefinite. Furthermore, the use of an additional reference number, i.e., 51, confuses the claimed subject matter. (6) As to claim 12, should "(200" be "(200)"? Omitting the closed parenthesis renders the subject matter indefinite. (7) The "spring elements" in claim 13 are inferred and, therefore, results in a claimed limitation in a non-positive manner. Accordingly, it is unclear if these "spring elements" are or are not part of

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the device. (8) As to claim 14, failure to provide antecedence for the "outer levers" and "inner levers" renders the subject matter indefinite.

#### **WITHDRAWAL OF NON-ELECTED CLAIMS**

Claims 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 18, 2008.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 1-4, 8, 11, 15 and 16 contains allowable subject matter because the prior art of record does not show the claimed crimping device *inter alia* with tool elements adjustable in opposite directions having cutting teeth and can be moved along a first axis and a second axis perpendicular to the first axis and having a wedge slider and guide slider with corresponding slanted surfaces that guide the tool elements in a direction of the first axis which axis lies flush with a face normal to the carrier plate for forming teeth, burrs or crimps in the carrier plate and would be allowed upon the filing of a Terminal Disclaimer per the above obviousness Double Patenting rejection.

Claims 5-7, 9, 10 and 12-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and upon the filing of a Terminal Disclaimer per the above obviousness Double Patenting rejection.

### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

### **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(571) 272-4516**. The examiner's office hours are 7:00AM-3:30PM, Monday through Friday.

Documents related to the instant application may be submitted by facsimile transmission at all times to Fax number **(571) 273-8300**. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Examiner's Fax number is **(571) 273-4516**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCCrane  
March 18, 2008

/Daniel C Crane/  
**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725

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